

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 679 of 2007

DATED: 26.12.2007

Between:

Sri Shaik Anwar Pasha

petitioner

And

The Divisional Coop Officer,
Hyderabad East Division, RR District
Hyderabad and another

Respondents

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ORAL ORDER:

This writ petition is filed questioning the proceedings before the Divisional Cooperative Officer, Hyderabad, East Division, Ranga Reddy District, Hyderabad in Case No.1139 of 2005-G.

It is the case of the petitioner that he has taken loan from the 2nd respondent bank and the second respondent bank represented by the Liquidator has filed an application under section 71(1) of the Andhra Pradesh Cooperative Societies Act, 1964 (for short 'the Act'), to issue a certificate for a sum of Rs.2,21,122/- against him towards principal and interest up to 30.11.2002. Based on the said application, a notice dated 30.8.2006 was issued to the petitioner by the Deputy Registrar of Cooperative Societies, Hyderabad, directing him to appear in person on 16.9.06 to show cause against the application filed under section 71(1) of the Act by the second respondent. The main contention of the petitioner is that he has discharged the debt and is not liable to pay any amount and that he has also filed memos dated 16.9.2006 and 25.11.2006 to furnish the statement of accounts and the audit reports of the respondent Bank for the years 2000 to 2004 to substantiate his case that he has paid the loan amount and that his account was closed. Contending that the non-furnishing of the above stated documents resulted in great prejudice to him, the present writ petition is filed stating that the proceedings before the Deputy Registrar of Cooperative Societies cannot go on without furnishing the documents sought for by him. It is also his case that the present presiding officer is the in-charge Liquidator of the 2nd respondent Bank at the time of filing of the application under Section 71 of the Act and on that count also the proceedings before the Deputy Registrar cannot go on.

This Court while admitting the writ petition on 5.1.2007 granted interim stay of further proceedings in pursuance of the impugned notice dated 30.8.2006. Thereafter, the 1st respondent – The Divisional Cooperative Officer, Hyderabad East Division has filed a vacate stay petition in W.V.M.P. No. 3109 of 2007 accompanied with a counter affidavit, seeking vacation of the interim orders granted by this Court. Though the writ petition was admitted on 5.1.2007, when the vacate petition was taken up for hearing, it was noticed that the 2nd respondent could not be served with the notice, as the address furnished by the petitioner was insufficient. Therefore, on 18.12.2007, the petitioner was again directed to take out notice to the 2nd respondent personally and also to furnish his correct address and the matter was adjourned to 26.12.2007. Even on that date, the petitioner did not furnish the correct address of the 2nd respondent and, therefore, the writ petition itself was taken up for final disposal.

Heard the learned counsel for the petitioner as well as the learned counsel for the 2nd respondent.

The 2nd respondent has filed an application under Section 71(1) of the Act against the petitioner and based on the said application, the Deputy Registrar of Co-operative Societies issued notice to the petitioner on 15.7.2004 calling upon him to appear before the competent authority on 24.7.2004 and also to show cause as to why the certificate under Section 71(1) of the Act should not be issued. As against the impugned show cause notice, the petitioner has an effective alternative remedy of approaching the Tribunal under Section 76(1) of the Act, however, without exhausting the said remedy, he has straight away approached this Court.

Despite granting sufficient time, and despite specific directions by this Court to the petitioner to furnish the correct address of respondent No.2, he has failed to furnish the same, and for non-furnishing of correct address, which resulted in the 2nd respondent not being served, the writ petition is liable to be dismissed on this score itself.

Insofar as the contention of the petitioner that since the

Presiding Officer was the Presenting Officer of 2nd respondent-Bank when he filed the application, he cannot conduct the present proceedings, is concerned, it is stated in the counter filed by the 1st respondent that he had obtained orders from the Commissioner for Co-operation and Registrar of Co-operative Societies, for posting another officer of the Department as Presiding Officer in the place of the present Presiding Officer, and having obtained orders, vide proceedings dated 6.1.2005, appointed another officer as Presiding Officer in the place of the present Presiding Officer. Since another officer has been appointed as Presiding Officer in the place of the present Presiding Officer, who was earlier Presenting Officer of the 2nd respondent, the grievance of the petitioner stands redressed.

Insofar as the request made by the petitioner for furnishing of copies of statement of accounts and audit reports of the 2nd respondent-Bank for the years 2000 to 2004, as they would reflect closure of his loan account, is concerned, it is stated in the counter that even if the Auditor goes in detail of the outstanding and pending loan accounts, he may merely mentioned the details of the accounts which have become non-performing assets and against which legal action has been initiated or can be initiated for recovering the loan amount, and he may not deal with the details of closed loan accounts, and at the most, he may give the number of loans closed on complete realization of the dues. However, it has to be verified whether the Auditor has discussed the said details in the audit reports. It is however, contended in the counter that the arbitration case will be taken up for enquiry only after the 2nd respondent furnishes the statement of account of the petitioner and also the audit reports as sought for by him. In view of the stand taken by the 1st respondent in the counter that they will proceed with the arbitration case only after he is furnished with the statement of accounts and audit reports as sought for by him, the petitioner's grievance stands redressed.

In the above view of the matter, I do not find any merit in the writ petition, and the same is accordingly dismissed, and consequently the interim order granted by this Court on 5.1.2007 is vacated.

However, the respondents as stated by them in the counter, before proceeding further in the matter shall furnish the copies of the statements of the amounts paid by the petitioner as sought for by him. If

the petitioner has cleared the debt, he can furnish the documents available with him in proof of repayment of the debt, and in which event, the 1st respondent shall verify the same, and take the same into account while disposing of the arbitration case.

N.V.RAMANA,J

DATED: 26.12.2007

TVK/msv

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